

CHAPTER 103
COMMUNITY RIGHT TO KNOW

[Prior to 9/24/86, Labor, Bureau of[530]]

347—130.1(89B) Employer's duty. Upon request, an employer has a duty to inform the public of the presence of hazardous chemicals in the community and the potential health and environmental hazards that the chemicals pose. Requests shall be made during normal office hours of the employer. The employer shall provide the information or reason for refusal within ten days. If the request is from a health professional, the information shall be provided immediately.

347—130.2(89B) Records accessibility.

130.2(1) Records do not need to be accessible to public if the information is a trade secret or the employer has notified the division in writing that certain information should not be accessible to the public for reasons that the information is not relevant to public health and safety or the release of the information is proven to cause damage to the employer.

130.2(2) Accessible records include the material safety data sheets. The employer shall also provide information concerning the quantity of each hazardous chemical stored or used. Quantity information may include the manner of purchase such as in gallon containers, barrels, tankers, etc. Additionally, the employer shall provide information specifying the quantity as less than 500 pounds, between 500 pounds and 1000 pounds, between 1000 pounds and 5000 pounds, or in excess of 5000 pounds.

130.2(3) An employer is not required to make a copy of a material data sheet if the interested person is given an opportunity to review and make notes regarding the material safety data sheet.

If an employer provides a copy of a material safety data sheet at the request of the interested person, a reasonable fee can be charged for the actual cost of copying.

347—130.3(89B) Application for exemption. To obtain an order from the commissioner pursuant to Iowa Code chapter 89B and rule 130.2(89B), an employer shall make a written application to the commissioner setting forth the specific grounds for the claimed exemption. Upon receipt of an application, the commissioner shall give the applicant notice and opportunity to be heard at a full evidentiary hearing before the commissioner.

347—130.4(89B) Burden of proof and criteria.

130.4(1) Trade secrets. The employer-applicant shall have the burden of proof in showing that the information claimed exempted qualifies as a trade secret.

a. At the discretion of the commissioner, official notice may be taken that similar information of the employer-applicant has been deemed a trade secret for the purpose of rule 347—110.6(88,89B) and the commissioner may summarily grant the exemption based on the official notice.

b. The criteria for determining a trade secret under this rule shall be identical to that under rule 347—110.6(88,89B).

130.4(2) Relevance of public health and safety/damage to employer. The employer-applicant shall have the burden of proof in showing that the information is not relevant to public health and safety or that the release of the information would damage the employer. Notification in writing by the employer is not, in and of itself, sufficient to allow the employer to obtain the exemption.

347—130.5(89B) Formal ruling. The commissioner shall issue a formal ruling upon application. The ruling shall set forth findings of fact and conclusions of law and grant or deny the application. The ruling shall be the final agency action for purposes of Iowa Code chapter 17A.

347—130.6(89B) Request for information. An interested person may request information from an employer. If the request is denied by the employer, the requesting party may then file an application for information with the division. The application will set forth the information being requested and that

information was refused by the employer or that the employer denies access or that the employer alleged that no records were kept. The applicant shall state the interest in the information requested to be received.

347—130.7(89B) Filing with division. Upon receipt of application for information, the division shall determine if the applicant has a legitimate interest, and if so, the division shall make a written demand upon the employer to provide the requested information to the division. If the employer complies, the division shall forward copies to the interested person. Requests for the information under rule 130.6(89B) will be kept confidential. The division shall not disclose the name of the interested person to any person.

347—130.8(89B) Grounds for complaint against the employer. The commissioner may cite the employer on a formal written complaint on any of the following grounds:

130.8(1) The division has not received a reply within 30 days of the request for information pursuant to rule 130.7(89B); or

130.8(2) The division finds on an IOSH inspection that the employer's records materially distort the information given the public or an emergency response group so as to pose a serious hazard to community health, environment, or emergency response personnel.

347—130.9(89B) Investigation or inspection upon complaint. Within 15 days of determining that there are grounds for a complaint, the commissioner shall either notify the employer in writing of the grounds of the complaint and request information or conduct an unannounced inspection of the employer's workplace at reasonable times and in a reasonable manner. Within 30 days of initiating an investigation or inspection, the division may find that the complaint is invalid and unfounded and shall so inform the interested person and the employer in writing.

347—130.10(89B) Order to comply.

130.10(1) If after conducting an investigation or inspection of the employer's workplace the commissioner finds that the complaint is meritorious, the commissioner shall issue an order to comply to the employer which shall set forth with specificity the employer's noncompliance with the Act or rules. The commissioner shall give the employer a period of 30 days to take remedial steps for compliance. The commissioner may establish a shorter period of time if justification is provided in the order to comply.

130.10(2) An employer may request an administrative hearing on the order to comply at any time prior to the time set forth for compliance in the order to comply.

130.10(3) If the employer has not requested a hearing, the commissioner, after the time set forth for compliance with the order to comply, may reexamine records submitted by the employer or may reinspect the premises. If the employer has not taken the necessary remedial steps required by the order to comply, the commissioner, upon notice and administrative hearing, may issue a decision on the order to comply which shall be deemed a final agency action pursuant to Iowa Code chapter 17A. The rules contained in 347—Chapter 300 are applicable to the hearing.

130.10(4) In the event that the employer fails to comply with a decision on the order to comply, the commissioner may commence an action in the Iowa District Court for injunctive and other equitable relief that may be just and equitable.

347—130.11(30,89B) Relationship to Emergency Planning and Community Right-to-know Act.

The requirements of this chapter are in addition to those of the Iowa emergency response commission at 607—104.3(30). Information and forms required to be submitted pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11021 and 11022, shall be sent to the Emergency Response Commission, Division of Labor, 1000 East Grand Avenue, Des Moines, Iowa 50319. The federal Tier Two Form is a mandatory reporting form under Section 312 (42 U.S.C. 11022).

347—130.12(30,89B) Information to county libraries. The commissioner will provide annually to the main library in the county seat city in each county a list of facilities and chemicals reported to the commissioner under Section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11022. The report will be distributed by November 1 annually for the previous year's chemical inventories.

These rules are intended to implement Iowa Code section 30.7 and chapter 89B.

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CHAPTERS 131 to 139

Reserved